IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1249 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KADER @ ARIF ABDUL RAHIM SAHIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1249 of 2002

MS KRISHNA U MISHRA for Petitioner No. 1

MR SS PATEL, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/02/2002

ORAL JUDGEMENT

1. Commissioner of Police, Baroda City, Baroda, passed an order on the 8th August, 2001 in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said

Act.

2. The detaining authority took into consideration two offences registered against the petitioner, so also the statements of three anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Mishra, learned advocate appearing for the petitioner, has restricted her arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. She submitted that the authority has not undertaken the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. Ms. Mishra submitted further that the grounds of detention do not indicate any satisfaction recorded by the detaining authority to indicate that the activities of the detenu are detrimental to public health and, therefore, there is improper exercise of powers under Section 3 of the PASA Act. She submitted that the petition may, therefore, be allowed.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition.

5. Considering the rival side contentions, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the

detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kajalben G. Sindhi v. Commissioner of Police, 2000(2) GLR 1296. Gujarat & Ors., 1993(2) GLR 1659).

6. Adverting to the offences registered against the detenu are concerned, as contended by Ms. Mishra, the grounds of detention do not indicate any satisfaction recorded by the detaining authority to indicate that the activites of the detenu are detrimental to public health and public order. Therefore, there is improper exercise of powers under Section 3 of the PASA Act. On this ground also, the petition deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated the 8th August, 2001, passed against the detenu is hereby quashed. The detenu-Kader @ Arif Abdulrahim Shaikh is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

8. Direct service is permitted.

[A.L. DAVE, J.]

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